

FILED & ENTERED

JUL 28 2017

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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**NOT FOR PUBLICATION**

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

In re:

GINA MARIE ROMEO,

Debtor.

Case No. 2:13-BK-14625-RK

Chapter 7

**ORDER GRANTING DEBTOR'S MOTION  
TO REOPEN CHAPTER 7 CASE,  
VACATING HEARING ON MOTION AND  
FOR SANCTIONS AGAINST COUNSEL  
FOR DEBTOR FOR NON-COMPLIANCE  
WITH LOCAL BANKRUPTCY RULE  
5010-1(e)**

Vacated Hearing:

Date: August 1, 2017

Time: 2:30 p.m.

Place: Courtroom 1675

Roybal Federal Building

255 East Temple Street

Los Angeles, CA 90012

Pending before the court is the motion ("Motion") to reopen this Chapter 7 bankruptcy case of Gina Marie Romeo ("Debtor" or "Movant"), ECF 13, filed on June 23, 2017. The Motion was filed on behalf of Debtor by her general bankruptcy counsel of record, Michael Jay Berger, of the Law Offices of Michael Jay Berger ("Attorney Berger").

Having reviewed the Motion and related papers, the court first takes judicial notice of Local Bankruptcy Rule ("LBR") 5010-1(e) that "[a] motion to reopen may be ruled upon without a hearing pursuant to LBR 9013-1(q)" and that "[t]he movant must not calendar a

1 hearing date nor will a hearing be held on the motion, unless otherwise ordered by the  
2 court” and that there is no order permitting Movant or her counsel, Attorney Berger, to  
3 calendar the motion for hearing. The Motion stated that Movant sought reopening of her  
4 bankruptcy case to file a motion to avoid the lien of a creditor, Gilligan Law Corporation.  
5 ECF 13 at 2.

6 Movant by her counsel, Attorney Berger, originally filed the Motion, stating on the  
7 first page that “No Hearing Required Per LBR 9013-1(q).” ECF 13 at 1. This statement  
8 was correct, but on the same day that the Motion was filed and served, on June 23, 2017,  
9 Movant by her counsel, Attorney Berger, also filed a Notice of Opportunity to Request a  
10 Hearing on Motion pursuant to LBR 9013-1(o). ECF 14. Technically speaking, this was  
11 not necessary because a hearing is generally not required under LBR 9013-1(q). The  
12 creditor, Gilligan Law Corporation (“Gilligan”), filed a notice of opposition and a request  
13 for a hearing. ECF 16, filed on July 6, 2017. The creditor’s request for a hearing was  
14 understandable in light of the unnecessary invitation made by Movant and her counsel,  
15 Attorney Berger, to request a hearing on a motion for which a hearing is not required. In  
16 response to the notice of opposition filed by Gilligan, on July 6, 2017, Movant by her  
17 counsel, Attorney Berger, filed a notice of hearing on the Motion for August 1, 2017 at  
18 2:30 p.m. ECF 15, filed on July 7, 2017. Movant’s filing of the notice of hearing on the  
19 Motion by Attorney Berger was improper because it was in violation of LBR 5010-1(e)  
20 that “[t]he movant must not calendar a hearing date nor will a hearing be held on the  
21 motion, unless otherwise ordered by the court”, that there was no such court order and  
22 that Movant and her counsel not even applied for such an order. The court did not  
23 authorize any hearing on the motion to reopen pursuant to LBR 5010-1(e), and it does  
24 not matter that a creditor filed an opposition and requested a hearing pursuant to LBR  
25 9013-1(o) since the more specific rules in LBR 5010-1(e) and 9013-1(q) govern, and as  
26 Movant in her reply stated that the reopening of a bankruptcy case is “simply a ministerial  
27 act, which ‘lacks independent legal significance. . . .” ECF 18, filed on July 25, 2017, at  
28 5, *citing inter alia, In re Menk*, 241 B.R. 896, 913-917 (9th Cir. BAP 1999). Thus, the

1 court determines that a hearing on the Motion is not required, not necessary and not  
2 permitted, takes the Motion under submission, vacates the August 1, 2017 hearing on the  
3 Motion as improvidently noticed by Debtor, and rules as follows on the Motion.

4 Having reviewed the Motion, opposition and reply, the court determines that  
5 pursuant to Local Bankruptcy Rules 5010-1(e) and 9013-1(q), a hearing on the Motion is  
6 not required, nor necessary, takes the Motion under submission, vacates the August 1,  
7 2017 hearing on the Motion as improvidently noticed by Debtor, and rules as follows on  
8 the Motion.

9 The court determines that the Motion to reopen should be granted “for cause”  
10 under 11 U.S.C. § 350(b) and Federal Rule of Bankruptcy Procedure 5010 for the  
11 reasons stated in the moving papers, that is, to allow Debtor to file a motion to avoid lien  
12 pursuant to 11 U.S.C. § 522(f). *See also*, 4 March, Ahart and Shapiro, *California Practice*  
13 *Guide: Bankruptcy*, ¶ 23:151 at 23-20 (2016), *citing, inter alia*, *In re Menk*, 241 B.R. at  
14 913 (“[T]he reopening of a closed bankruptcy case is a ministerial act that functions  
15 primarily to enable the file to be managed by the clerk as an active matter and that, by  
16 itself, lacks independent legal significance and determines nothing with respect to the  
17 merits of the case.”).

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. Debtor’s Motion to reopen the above-captioned Chapter 7 bankruptcy case is  
20 GRANTED pursuant to 11 U.S.C. § 350(b), Federal Rule of Bankruptcy Procedure  
21 5010, and Local Bankruptcy Rules 5010-1 and 9013-1(q), and the bankruptcy  
22 case is ordered reopened.
- 23 2. The hearing on the Motion to reopen set for August 1, 2017 at 2:30 p.m. is  
24 VACATED and TAKEN OFF CALENDAR. No appearances are required at the  
25 August 1, 2017 hearing on the Motion.
- 26 3. Although the court grants the Motion, the court observes that Debtor’s counsel,  
27 Michael Jay Berger, who filed the Motion on Debtor’s behalf, acted contrary to  
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1 Local Bankruptcy Rule 5010-1(e) by calendaring a hearing date for the Motion  
2 without prior court authorization, which expressly provides that, "A motion to  
3 reopen may be ruled on without a hearing pursuant to LBR 9013-1(q). The  
4 movant must not calendar a hearing date nor will a hearing be held on the motion,  
5 unless otherwise ordered by the court." The court takes judicial notice that this is  
6 not the first time that the court has had to admonish Attorney Berger for a  
7 transgression of Local Bankruptcy Rule 5010-1(e) as he committed a similar  
8 violation in noticing a hearing on a motion to reopen a bankruptcy case in *In re*  
9 *Adrian J. Hernandez*, No. 2:12-bk-47099 RK Chapter 7 (Bankr. C.D. Cal., order  
10 granting motion of Creditors Jaime Farias and Myrna Farias to reopen bankruptcy  
11 case, filed and entered on October 8, 2015).

12 4. Pursuant to Local Bankruptcy Rule 9011-3(a), to remedy the violation of Local  
13 Bankruptcy Rule 5010-1(e), Attorney Berger is now ordered to re-read Local  
14 Bankruptcy Rule 5010-1(e) and file a declaration under penalty of perjury with the  
15 court stating that he has done so and now understands it and will obey it on or  
16 before August 15, 2017. Failure to timely file this declaration with the court may  
17 result in the imposition of monetary sanctions against Attorney Berger. Further  
18 transgressions of Local Bankruptcy Rule 5010-1(e) by Attorney Berger will result in  
19 the imposition of sanctions, which may include attorneys' fees to compensate  
20 opposing parties for having had to file unnecessary oppositions and requests for  
21 hearing in response to a motion to reopen.

22 5. The court sets a further hearing on these sanctions against Attorney Berger on  
23 August 22, 2017 at 1:30 p.m. for him to be heard if he seeks reconsideration of  
24 these sanctions. The hearing will be in Courtroom 1675, Roybal Federal Building,  
25 255 East Temple Street, Los Angeles, California. If Attorney Berger fails to file the  
26 declaration that he has read and understood Local Bankruptcy Rule 5010-1(e) as

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1 ordered, he is ordered to appear at the hearing on August 22, 2017 at 1:30 p.m.  
2 If Attorney Berger timely files the declaration, the court will assume that he does  
3 not contest these sanctions, and the court will take the hearing off calendar.

4 **IT IS SO ORDERED.**

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23 Date: July 28, 2017



24 Robert Kwan  
25 United States Bankruptcy Judge  
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